IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7801 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOKBHAI DALAJI MARWADI

Versus

COMMISSIONER OF POLICE AHMEDABAD CITY

Appearance:

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS MITA PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 04.4.2003 passed by the Police Commissioner, Ahmedabad City, against him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring

the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 04.4.2003.

2. The grounds of detention served upon the detenu and placed on record clearly reveal that the detaining authority took into consideration two aspects of the matter, firstly, two crimes registered against the petitioner under the Bombay Prohibition Act on 4.1.2003 and 1.4.2003, and secondly, the detaining authority also took into consideration in-camera statements of two informant witnesses recorded by the proposing authority on 1.4.2003 and verified by the detaining authority on 2.4.2003 revealing the incidents occurred on 2.3.2003 and 26.3.2003 by the witnesses. So far as the crimes registered against the petitioner, in one case, he was found in possession of 132 liters of country liquor, and in other offence, in possession of 150 liters of country liquor, while from the witnesses it is found by the proposing authority that in respect of incident occurred on 2.03.2003 while the witness was near Hirabhai Tower, Maninagar and petitioner after stopping him said that the witness was offering information about his illegal activities of selling country liquor and on refusing by the witness the witness was beaten by the petitioner. The crowd was gathered but the petitioner took out knife and aimed at the throat of the witness and abused the crowd and rushed towards the crowd with the knife. The crowd was dispersed, the traffic was disrupted, the petitioner had created an atmosphere of terror and fear. While it is revealed in respect of the incident occurred on 26.3.2003, the witness with his vehicle was standing opposite Jivarambhai Patel Supermarket at Maninagar, where the petitioner approached the witness and asked to lend the scooter of the petitioner for some time for transporting illegal liquor which was refused by the witness and on account of refusal, the witness was beaten by the petitioner. Witness called for the help and therefore nearby residents, shopkeepers and by-passers gathered around. At that juncture, the petitioner took out a knife and threatened to kill the witness and rushed towards the crowd with the open knife. The persons gathered were dispersed on account of fear, public traffic was disrupted and there was an atmosphere of fear and terror in the said locality. Relying on the above material, the detaining authority came to the conclusion that the activities of the petitioner was of bootlegger and prejudicial to the maintenance of public order and hence the detaining authority reached to the subjective

satisfaction to pass an order impugned in this petition.

3. Learned Advocate Ms. DR Kachhavah for the petitioner and learned AGP Ms. Mita Panchal were heard at length. Learned AGP placed on record an affidavit-in-reply of the detaining authority which is also taken into consideration.

4. On behalf of the petitioner, mainly two contentions were raised, one in respect of, from the facts alleged, would it be said that the public order was disturbed, and secondly, since in one of the offence subsequently registered against the petitioner, the petitioner was in custody and without any material on record, the detaining authority came to the conclusion that the petitioner was likely to move the bail application before the competent court and was likely to be released on bail and to continue his illegal activities. To the contentions, the learned AGP tried to draw the attention of this Court the affidavit filed by the detaining authority, in which it is clearly mentioned by the detaining authority that the detaining authority was satisfied that the public order was disturbed by the anti-social and bootlegging activities and it was necessary to detain the detenu under the PASA Act with a view to immediately prevent him from continuing such anti-social and bootlegging activities and from acting in any manner prejudicial to the maintenance of public order after relaying upon in-camera statement, and genuineness and correctness of which, was personally verified by the detaining authority. So far as the aspect of judicial custody of the petitioner is concerned, in para 11 of the affidavit-in-reply, the detaining authority on oath stated that after the proper application of mind to the material placed before the detaining authority from the facts and circumstances of the case as well as the legal provisions applicable to the facts and circumstances of the case, necessitated the detaining authority to pass the order of detention immediately and, therefore, the contention raised on behalf of the petitioner in this regard also was controverted.

5. Out of the above two contentions, it appears from the rival contentions that this Special Civil Application can be disposed of only on the sole ground that whether the detaining authority applied its mind to the vital aspect of the matter properly to reach to the subjective satisfaction. The facts of the case are squarely convered by the decision of the Apex Court in the matter of AMRUTLAL vs. UNION OF INDIA, reported in AIR 2000 SC 3675 wherein the Apex Court ruled that the detaining

authority must rely upon the cogent material to reach to the subjective satisfaction that the detenu was likely to be released on bail and was likely to continue his illegal activities though in the grounds mentioned and in the affidavit-in-reply filed by the detaining authority it is observed that at any time the detenu was likely to file bail application and was likely to be released on bail, but nowhere it is stated by the detaining authority that what material was taken into consideration to reach to this subjective satisfaction. Learned Advocate for the petitioner makes a statement that the detenu has not filed any bail application in respect of the offence in which he is still under judicial custody. In this view of the matter, the order of detention impugned in this petition, requires to be quashed and set aside on the sole ground that the detaining authority did not consider the vital and important aspects of the matter to reach to the subjective satisfaction that whether the detenu was likely to be released on bail. The order impugned is required to be quashed and set aside.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 04.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair